

# Rules and Regulations

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## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 906

[Docket No. FV95-906-3-FIR]

#### Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Final Rule To Temporarily Relax Size Requirements for Texas Grapefruit

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule which temporarily relaxed the minimum size requirements for Texas grapefruit for the entire 1995-96 season. This interim final rule is designed to help the Texas citrus industry successfully market the 1995-96 season grapefruit crop.

**EFFECTIVE DATE:** January 17, 1996.

**FOR FURTHER INFORMATION CONTACT:** Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523-S, Washington, DC 20090-6456; telephone: 202-690-3670; or Belinda G. Garza, McAllen Marketing Field Office, USDA/AMS, 1313 East Hackberry, McAllen, Texas 78501; telephone: 210-682-2833.

**SUPPLEMENTARY INFORMATION:** This final rule is issued under Marketing Agreement and Marketing Order No. 906 (7 CFR part 906) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in

conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 citrus handlers subject to regulation under the order covering oranges and grapefruit grown in Texas, and approximately 1,500 producers of these citrus fruits in Texas. Small agricultural service firms, which includes grapefruit handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$5,000,000, and small

agricultural producers are defined as those whose annual receipts are less than \$500,000. A majority of these handlers and producers may be classified as small entities.

This rule finalizes the temporary relaxation of the minimum size requirements for grapefruit as prescribed under the Texas citrus marketing order. The rule provides that pack size 112 grapefruit may be shipped throughout the entire 1995-96 season if such grapefruit grade at least U.S. No. 1. This relaxation is similar to the relaxations which were issued for the 1993-94 and 1994-95 seasons. This relaxation was unanimously recommended by the Texas Valley Citrus Committee (TVCC).

The interim final rule was issued on October 17, 1995, and published in the October 23, 1995, Federal Register (60 FR 54291), providing a 30-day comment period ending November 22, 1995. No comments were received.

Minimum grade and size requirements for fresh grapefruit grown in Texas are in effect under § 906.365 (7 CFR 906.365). This rule amends § 906.365 by revising paragraph (a)(4) to permit shipment of grapefruit measuring at least 3<sup>5</sup>/<sub>16</sub> inches in diameter (pack size 112) and grading at least U.S. No. 1 for the entire 1995-96 season ending June 30, 1996.

Section 906.365 establishes minimum size requirements for Texas grapefruit. During the period November 16 through January 31 each season, grapefruit must be at least pack size 96, that is the minimum diameter for the grapefruit in any lot is 3<sup>9</sup>/<sub>16</sub> inches. At other times, grapefruit that is pack size 112, except that the minimum diameter for grapefruit in any lot is 3<sup>5</sup>/<sub>16</sub> inches, may be shipped if it grades at least U.S. No. 1. The minimum grade requirement for grapefruit is Texas Choice.

Permitting shipments of pack size 112 grapefruit grading at least U.S. No. 1 for the remainder of the 1995-96 season will enable Texas grapefruit handlers to meet market needs and compete with similar sized grapefruit expected to be shipped from Florida.

The relaxation is expected to help the Texas citrus industry successfully market its 1995-96 season grapefruit crop and have a positive effect on producer returns. Permitting shipments of pack size 112 grapefruit grading at least U.S. No. 1 for the entire 1995-96

season will enable Texas grapefruit handlers to meet market needs. This final rule is based on the current and prospective crop and market conditions for Texas grapefruit. Fresh Texas grapefruit shipments began in late September this season.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the TVCC and other available information, it is found that finalizing this rule without change, as published in the Federal Register (60 FR 54291, October 23, 1995) will tend to effectuate the declared policy of the Act.

#### List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

#### **PART 906—ORANGES AND GRAPEFRUIT GROWN IN THE LOWER RIO GRANDE VALLEY IN TEXAS**

Accordingly, the interim final rule amending 7 CFR part 906 which was published at 60 FR 54291 on October 23, 1995, is adopted as a final rule without change.

Dated: December 12, 1995.  
Sharon Bomer Lauritsen,  
*Deputy Director, Fruit and Vegetable Division.*  
[FR Doc. 95-30672 Filed 12-15-95; 8:45 am]  
BILLING CODE 3410-02-P

#### **7 CFR Part 984**

[Docket No. FV95-984-2FIR]

#### **Walnuts Grown in California; Expenses and Assessment Rate**

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorized expenses and established an assessment rate that generated funds to pay those expenses. Authorization of this budget enables the Walnut Marketing Board (Board) to incur expenses that are reasonable and necessary to administer the program.

Funds to administer this program are derived from assessments on handlers.

**EFFECTIVE DATE:** August 1, 1995, through July 31, 1996.

**FOR FURTHER INFORMATION CONTACT:** Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, PO. Box 96456, room 2523-S, Washington, DC 20090-6456, telephone 202-720-9918, or Mark A. Hessel, California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Suite 102B, 2202 Monterey Street, Fresno, CA 93721, telephone 209-487-5901.

**SUPPLEMENTARY INFORMATION:** This rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the provisions of the marketing order now in effect, California walnuts are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable walnuts handled during the 1995-96 marketing year, which began August 1, 1995, and ends July 31, 1996. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural

Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of California walnuts under this marketing order, and approximately 65 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than \$500,000, and small agricultural service firms are defined as those whose annual receipts are less than \$5,000,000. The majority of California walnut producers and handlers may be classified as small entities.

The budget of expenses for the 1995-96 marketing year was prepared by the Walnut Marketing Board, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Board are producers and handlers of California walnuts. They are familiar with the Board's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Board was derived by dividing anticipated expenses by expected merchantable certifications of California walnuts. Because that rate will be applied to the actual quantity of certified merchantable walnuts, it must be established at a rate that will provide sufficient income to pay the Board's expenses.

The Board met September 8, 1995, and unanimously recommended a 1995-96 budget of \$2,280,175, \$109,403 more than the previous year. Budget items for 1995-96 which have increased compared to those budgeted for 1994-95 (in parentheses) are: Field travel and relates expenses, \$17,000 (\$13,000), general insurance, \$6,800 (\$6,400), social security and hospital insurance taxes, \$9,286 (\$8,129), audit, \$8,900, (\$8,700), group life, retirement, and medical, \$45,861 (\$44,370), office